

COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02570/ADJ/2026

In the matter between:

MERCH LAB (PTY) LTD

APPLICANT

(Registration Number: 2023/983638)

and

MERCHLAB AFRICA (PTY) LTD

RESPONDENT

(Registration Number: 2026/003723/07)

Coram: D Terblanche

Date: 19 June 2026

DECISION AND REASONS (Ruling on the Default Application)

1. INTRODUCTION

[1] The Applicant has lodged an application in terms of Section 160 of the Companies Act, 71 of 2008 (the "Act"), read with Regulation 142 of the Companies Regulations, 2011 promulgated under GN R351 in GG 34239 of 26 April 2011 (the "Regulations"), disputing the Respondent's name. The Applicant further seeks a default order in terms of Regulation 153 of the Regulations on the grounds that the Respondent has failed to file an answering statement within the prescribed period.

[2] The Tribunal has considered the Notices of Motion (Form CTR 142 and CTR 145), the Applicant's supporting affidavits, and the delivery report provided by the Applicant in support of the default order application.

2. BACKGROUND¹

- [3] The Applicant avers that it is the prior holder of the name "MERCH LAB", having reserved the name on 20 August 2025 and subsequently changed its name on the same date from Kutanza Investments to MERCH LAB (PTY) LTD.
- [4] The Respondent, "MERCHLAB AFRICA (PTY) LTD", was incorporated on 5 January 2026. The Applicant contends that this name is confusingly and deceptively similar to its own, in contravention of Section 11(2) of the Act.
- [5] The Applicant attempted to serve the founding papers on the Respondent on 29 January 2026. According to the delivery report and the Applicant's own affidavit, the courier was unable to deliver the documents, and the director of the Respondent expressly indicated that he would not accept service.
- [6] The Applicant now applies for a default order, asserting that the 20-day period for the Respondent to object has elapsed without the Respondent having filed his answering affidavit.

3. ISSUES FOR DETERMINATION

- [7] Before the Tribunal can consider the substantive merits of the name dispute, it must first determine whether the Applicant has complied with the mandatory procedural prerequisites for bringing this application. Specifically, the Tribunal must consider:
- (i) Whether the Applicant complied with the requirements of Regulation 142 of the Regulations promulgated under the Act requiring "... a supporting *affidavit setting out the facts on which the application is based...*" (my underling).

¹ The background appear from the Applicant's affidavits in support of the main and default applications.

Specifically, the founding affidavit has to be properly commissioned in terms of the Regulations Governing the Administering of an Oath or Affirmation²;

- (ii) (ii) Whether the application was validly served on the Respondent in terms of Regulation 142(2) which requires service within 5 business days after filing; and
- (iii) (iii) Whether the Applicant is entitled to a default order in terms of Regulation 153 of the Regulations, which permits a default order where a Respondent fails to respond, considering whether service was effected properly.

4. EVALUATION AND REASONS FOR DECISION

Issue 1: The Founding Affidavit has not been Properly Commissioned

[8] The Tribunal notes that the primary affidavit in support of the application, filed on 3 March 2026, lacks the requisite attestation by a Commissioner of Oaths. The document concludes with the deponent's acknowledgment but bears no signature, stamp, or registration details of a Commissioner.

[9] Regulation 142(1)(a) and (b) of the Companies Regulations, 2011 prescribes the formal requirements for instituting proceedings before the Tribunal. Regulation 142(1) reads as follows:

"(1) Any person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these Regulations, by completing and filing with the Tribunal's recording officer –

- (a) a Form CTR 142; an*
- (b) is based."*

[10] The supporting affidavit referred to in Regulation 142(1)(b) must comply with the formal requirements for affidavits as prescribed by the **Regulations Governing the Administering of an Oath or Affirmation** (Government Notice R1258 of 1972), promulgated under the Justices of the Peace and Commissioners of Oaths Act 16 of

² Government Notice R1258 of 1972; Regulation 3(1) requires deponent to sign in presence of commissioner

1963. Regulation 3(1) of these Regulations provides that *"the deponent shall sign the declaration in the presence of the commissioner of oaths"*.

[11] An affidavit that is not properly commissioned—that is, not signed by the deponent in the presence of a commissioner of oaths, and not bearing the commissioner's signature, stamp, and registration details—is legally defective and does not constitute valid evidentiary material before the Tribunal.

[13] In the present matter, the founding affidavit has not been commissioned at all—it bears no commissioner's signature, stamp, or any indication that it was signed in the presence of a commissioner. No exceptional circumstances have been advanced to justify overlooking this irregularity.

Finding:

[14] The founding affidavit is invalid for want of commissioning. This defect alone renders the application fundamentally flawed.

Issue 2: Failure to Effect Valid Service (Regulation 142(2))

[15] Regulation 142(2) of the Companies Regulations, 2011 provides a mandatory requirement:

"(2) The applicant must serve a copy of the application and affidavit on the respondent named in the application, within 5 business days after filing it."

[16] From the proof of service the Applicant filed with the Tribunal (including the Collivery waybill), and the Applicant's own allegations in paragraph 7 and 8 of the affidavit in support of his default order application—that service was not successfully effected. The courier, Collivery, confirmed that the receiver was "not available," the calls went unanswered, and the director of the Respondent "refused" to accept the documents.

[17] A respondent's refusal to accept physical delivery of documents does not equate to valid service. The Tribunal has consistently held that the onus is on the Applicant to ensure

that the documents are properly delivered. Simply providing proof of an *attempt* at delivery is insufficient compliance with Regulation 142(2).

[18] Furthermore, the Tribunal notes that the Applicant did not apply for an order for **substituted service** in terms of Regulation 7(3) of the Regulations. Where conventional service is unsuccessful or refused, the Applicant ought to approach the Tribunal for directions on alternative methods of service (e.g., service via email, publication, or at the registered address). The Applicant has failed to take this step.

[19] In the matter of **Teljoy Group (Pty) Ltd v Teljoy Bed Furnitures (Pty) Ltd (CTR004/12/2012) [2014] COMPTRI 6 (22 January 2014)**, the Companies Tribunal addressed the relationship between service and default orders. In that case, the Applicant had served the documents on the Respondent *before* filing them with the Tribunal, which contravened the peremptory requirements of Regulation 142(2). The Tribunal held that Section 153 (default orders) can only be invoked if Regulation 142 has been strictly complied with. Service is not a mere formality; it is the foundational mechanism that triggers the Respondent's duty to respond and secures the Tribunal's jurisdiction over the Respondent.

Finding:

[20] The Applicant has failed to serve the application on the Respondent in accordance with Regulation 142(2). The purported service attempt is legally ineffective.

Issue 3: The Applicant is not Entitled to a Default Order

[21] Section 153 of the Companies Act, 71 of 2008, read with Regulation 153 of the Companies Regulations, 2011, permits the Tribunal to make a default order against a respondent who fails to file a response. Regulation 153 provides:

"If a person served with an initiating document has not filed a response within the prescribed period, the Tribunal may make an appropriate order without further notice to that person."

[22] The requirements for a default order are strict:

- (i) Valid service of the initiating documents (including a validly commissioned affidavit in support of the application) must have occurred in terms of Regulation 142(2)
- (ii) The respondent must have failed to respond within the prescribed period; and
- (iii) The applicant must apply for the order.

[23] Because the Applicant has failed to satisfy the first requirement (valid service of the initiating documents which initiating documents should include a validly commissioned supporting affidavit), the subsequent failure of the Respondent to file an answering affidavit is legally irrelevant. The Tribunal cannot make an order against a party that has not been properly brought before it.

[24] The Applicant's reliance on the "20-day waiting period" is misplaced in the absence of proof of effective service. The Respondent is not in default because they were never lawfully called upon to answer.

Finding:

[25] The application for a default order is premature and procedurally incompetent.

5. CONCLUSION

[26] The Tribunal is sympathetic to the Applicant's desire to resolve the name dispute expeditiously. However, the law is clear: procedural fairness—specifically the *audi alteram partem* rule (hear the other side)—is the bedrock of administrative justice.

[27] The Applicant has approached the Tribunal with papers that contain two fatal procedural defects:

- (a) An un-commissioned founding affidavit, contrary to Regulation 142(1)(b) read with the Regulations Governing the Administering of an Oath or Affirmation (Government Notice R1258 of 1972); and

- (b) A failure to effect valid service in terms of Regulation 142(2) of the Companies Regulations, 2011.

[28] Consequently, the application is not properly before the Tribunal, and the request for a default order cannot succeed.

[29] The Tribunal notes that the Applicant is not without recourse. They may re-file the application with a properly commissioned affidavit and take the necessary steps to apply for substituted service (Regulation 7(3)) to bring the Respondent into the proceedings.

6. ORDER

[30] In light of the above reasons, the Tribunal makes the following order:

- (a) The Applicant's application for a default order in terms of Section 169 of the Companies Act, 71 of 2008, and Regulation 153 of the Companies Regulations, 2011, is hereby REFUSED.
- (b) No costs order is made.

SIGNED AND DELIVERED ON BEHALF OF THE COMPANIES TRIBUNAL ON THIS
19TH DAY OF JUNE 2026.

D Terblanche

MEMBER OF THE COMPANIES TRIBUNAL